APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,594	09/25/2001	Bruce Preston Williams	201-0238 GMB	5196

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EXAMINER
NEWHOUSE, NATHAN JEFFREY

ART UNIT	PAPER NUMBER
3727	

DATE MAILED: 03/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)	
Advisory Action	09/682,594	WILLIAMS ET AL.	
	Examiner	**Art Unit**	
	Nathan J. Newhouse	3727	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.
Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may <u>only</u> be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

<u>PERIOD FOR REPLY</u> [check either a) or b)]

a) ☒ The period for reply expires <u>4</u> months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on <u>17 February 2004</u>. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☐ The a)☐ affidavit, b)☐ exhibit, or c)☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

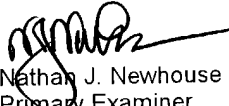   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>35,37-39(as set forth in the final rejection)</u>.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☒ Other: <u>See Continuation Sheet</u>

Nathan J. Newhouse
Primary Examiner
Art Unit: 3727

Continuation of 10. Other: As stated in the final rejection of Oct. 21, 2003 and during the interview of Dec. 9, 2003, certain elements that applicant is adding to the drawings and the specification are lacking in support in both the provisional application 60/259,005 and the orginally filed disclosure. Applicant's arguments are not found persuasive and the declaration of Le Nguyen has been considered, but does not overcome these rejections. Even if the roof rack disclosed in the provisional applicant and in the originally specification does function as applicant now describes, and the added subject matter simply clarifies this function, this was not orginally filed or disclosed. This is the same argument made previously with the exception of the declaration filed by Le Nguyen. While it is clear that Mr. Nguyen alleges that the broad disclosure in the originally filed specification and the provisional applicant would allow him to arrive at the conclusion that the roof rack must function and have the specific parts that applicant is now trying to add, there is no showing that Mr. Nguyen is one of "ordinary skill" in the art. In fact Mr. Nguyen states that he has been working in the art for 25 years and it would appear that he must therefore be an expert. In addition, it has no bearing that he could make this assertion as the examiner has already set forth examples of different configurations that would result in the same functioning roof rack. The rejection made was under 35 USC 112, first paragraph, new matter, and not under enablement..